IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2948 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRALBEN TIDABHAI GOHIL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DEVARSHI D VAIDYA for Petitioner(s) : 1,
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. Rule. Ms.Archna Raval, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 8.6.2004 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.50,450/- plus Rs.250/- by way of penalty in all Rs.50,700/- with regard to the document No.4375 executed and presented before the Sub-Registrar, Bhavnagar dated 20.8.1998 as well as Communication by the Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 15.2.2006 intimating the petitioner that as the application for reference to the Chief Revenue Controlling Authority under Section-32(B) of the Bombay Stamp Act is made after a period of 90 days, the said application is filed and / or returned as there is no provisions under the Act to

condone the delay.

4.Shri Vaidhya, learned advocate appearing on behalf of the petitioner has submitted that in fact, the order passed by Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 8.6.2004 was not served upon the petitioner till 31.1.2006 and the petitioner came to know about the said order only on 26.12.2005 and the petitioner got certified copy of the order on 1.2.2006 and therefore, in fact, there is no delay and the application / appeal is filed within the period of 90 days from the date of receipt of the order. It is also submitted that in fact, the said aspect has been mentioned in the application for condonation of delay, the same has not been considered by the Deputy Collector at all. It is further submitted that in fact the Chief Revenue Controlling Authority, State of Gujarat ought to have considered the same, against which, the Deputy Collector has informed the petitioner which is absolutely illegal and without jurisdiction. Shri Vaidhya, learned advocate appearing on behalf of the petitioners has

vehemently submitted that the impugned order dated 8.6.2004 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.5,15,500/-. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.1,10,000/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up

and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

5.Ms.Archana Raval, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 8.6.2004 no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.5,15,500/-. The learned AGP for the Authorities is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of *Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.*(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

6.Heard the learned advocates appearing on behalf of the parties.

7.I have gone through the orders impugned in the present petition passed by the Deputy Collector concerned. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.5,15,500/-. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.5,15,500/- It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.1,10,000/- and not more.

8.It is required to be noted that over and above the aspect discussed above, even in the application for condonation of delay before the Chief Revenue Controlling Authority and the appeal against the order passed by the Deputy Collector, Stamp Duty

Valuation dated 8.6.2004, the petitioner has specifically mentioned that the order passed by the Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 8-6-2004 was not served upon the petitioner till 31.1.2006 and the petitioner got certified copy of the order dated 1.2.2006 and in fact, till 20.12.2005 the petitioner was not aware of the impugned order. Considering the communication by the Deputy Collector, Stamp Duty Valuation, Bhavnagar vide its communication 15.2.2006, it appears that such aspect has not been considered by the said authority. In fact, when the appeal is preferred before the Chief Revenue Controlling Authority along with an application for condonation of delay. It is the contention on behalf of the petitioner that the appeal has been preferred within a period of limitation from the date of knowledge of the order, it is for the said authority i.e. Chief Revenue Controlling Authority to consider the same after calling for record and proceedings from the office of the Deputy Collector, Bhavnagar who has passed the impugned order and has to verify the aspect whether in fact

the order was served upon the petitioner at earlier point of time or not, and/or whether in fact, the impugned order came to be served upon for the first time on 1.2.2006 or not, and/or whether the petitioner had any knowledge of the impugned order prior to 20.12.2005 or not. But it appears that the Chief Revenue Controlling Authority has not applied its mind to that effect and the Deputy Collector has communicated the same mechanically. Under the circumstances, the impugned communication dated 15-2-2006 by the Deputy Collector, Bhavnagar is hereby quashed and set aside and the Chief Revenue Controlling Authority, State Government, Gandhinagar is directed to consider the submissions and contentions on behalf of the petitioner as mentioned in delay condonation application that whether the impugned order passed by the Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 8.6.2004 was served upon the petitioner at earlier point of time prior to 1.2.2006 or not, and/or whether the petitioner had knowledge with regard to the impugned order prior to 20.12.2005 or not, and for that, the Chief Revenue Controlling Authority

can call for record and proceedings from the office of the Deputy Collector, Bhavnagar who has passed the order dated 8.6.2004 to verify the same. If ultimately it is found that the impugned order was not served upon the petitioner and the same was served for the first time on 1.2.06, in that case, he may entertain the appeal and decide and dispose of the same in accordance with law and on merits subject to complying with other requirements as required to be complied with under Section-32-B of the Act such as pre-deposit etc. However, it ultimately it is found that the order passed by the Deputy Collector was served upon the petitioner on earlier point of time, then the Chief Revenue Controlling Authority need not entertain the same on merits. It is however made clear that this Court has not expressed any opinion neither on merits of the case, nor even with regard to condonation of delay and this Court has only directed the Chief Revenue Controlling Authority to verify the same on calling for record and proceedings from the office of the Deputy Collector, Bhavnagar who has passed the impugned order. Such an exercise is to be done

within two months from the date of receipt of this order.

9. In view of aforesaid observations and directions, the present special civil application stands disposed of accordingly.

Direct Service is permitted.

[M.R.Shah, J.]

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